PLACER COUNTY SUPERIOR COURT
CIVIL LAW AND MOTION TENTATIVE RULINGS
FRIDAY, AUGUST 14, 2020, AT 8:30 A.M.

These are the tentative rulings for civil law and motion matters set at **8:30 a.m., Friday, August 14, 2020**. The tentative ruling will be the court's final ruling unless notice of appearance and request for oral argument are given to all parties and the court by **4:00 p.m., Thursday, August 13, 2020**. Notice of request for oral argument to the court must be made by calling (916) 408-6481. Requests for oral argument made by any other method will not be accepted. Prevailing parties are required to submit orders after hearing to the court within 10 court days of the scheduled hearing date, and after approval as to form by opposing counsel. Court reporters are not provided by the court. Parties may provide a court reporter at their own expense.

Except as otherwise noted, these tentative rulings are issued by the **HONORABLE MICHAEL W. JONES** and if oral argument is requested, it will be heard in **Department 3**, located at **101 Maple Street, Auburn California**.

PLEASE NOTE: TELEPHONIC APPEARANCE IS REQUIRED FOR ALL CIVIL LAW AND MOTION MATTERS. (Emergency Local Rule 10.28; see also Local Rule 20.8.) More information is available at the court's website: www.placer.courts.ca.gov.

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1. M-CV-0019965 Gilman, Kevan H. vs. Sweeney, Mike, et al

This tentative ruling is issued by Commissioner Michael A. Jacques. If oral argument is requested it shall be heard August 14, 2020, at **2:00 p.m. in Department 40.**

Motion to Tax Costs (Judgment/Cost Memos Filed 5-19-2020)

Judgment creditor's motion to strike supplemental response is denied.

The parties' requests for judicial notice are granted.

Judgment debtor's motion to tax costs with respect to the underlying judgment against judgment debtor, and memoranda of costs filed May 19, 2020, is granted in part, and denied in part.

In 2007, judgment creditors Tammy Phillips ("Phillips") and Tammy R. Phillips, a Professional Law Corporation ("the Corporation") obtained a judgment against Kevan Gilman ("Gilman") on their cross-complaint. The judgment states principal damages totaling $20,608, statutory damages totaling $750, and prejudgment interest of $1,585. Judgment creditors were subsequently awarded attorneys' fees and costs of over $100,000.

Since that time, the parties have been engaged in ongoing and substantial litigation related to judgment creditors' efforts to collect on the judgment. On May 19, 2020, judgment creditors filed separate memoranda of costs on behalf of Phillips and the Corporation, each seeking attorneys' fees in the amount of $235,536.52 pursuant to Code of Civil Procedure section 685.040, for fees incurred between May 6, 2018 and May 6, 2020. Judgment creditors have previously claimed hundreds of thousands of dollars in enforcement fees and costs through various memoranda of costs and/or motions for fees filed in this action and other forums.

Code of Civil Procedure section 685.040 states:

> The judgment creditor is entitled to the reasonable and necessary costs of enforcing a judgment. Attorney's fees incurred in enforcing a judgment are not included in costs collectible under this title unless otherwise provided by law. Attorney's fees incurred in enforcing a judgment are included as costs collectible under this title if the underlying judgment includes an award of attorney's fees to the judgment creditor pursuant to subparagraph (A) of paragraph (10) of subdivision (a) of Section 1033.5.

Based on the plain language of the statute, fees will be permitted only to the extent they are both reasonable and necessary to enforce the judgment. As noted by judgment creditors, the basic test of reasonableness is that the losing party should bear fees if it would have been reasonable to bill the work to the prevailing party-client. *Hensley v. Eckerhart* (1983) 461 U.S. 424, 434.

The memoranda of costs identify nine discrete proceedings for which attorneys' fees are requested. Fees are requested at the billing rate of $395/hour as follows:

1. Appeal to BAP of fee award in bankruptcy case – 148 hours or $58,460
2. Appeal to BAP of sanctions issue in bankruptcy case – 187 hours or $73,865
3. Appeal to BAP of fee award and other issues in adversary proceeding – 215 hours or $84,925
4. Litigation on remand from the Ninth Circuit re Gilman's homestead exemption claim – 309 hours or $122,055
5. Appeal to appellate division of May 12, 2009 order – 3.2 hours or $1,264
6. Appeal to appellate division of June 2, 2009 order – 32 hours or $12,640
7. Appeal to appellate division of December 4, 2009 order – 88.9 hours or $35,115.50
8. Appeal to appellate division of July 12, 2010 order – 196 hours or $77,420
9. Response to Gilman's dismissal of his appeal to appellate division – 146 hours or $57,670

With respect to the above items, judgment creditors have unilaterally reduced the request by ten percent "in the interests of billing judgment".

As to Item 1, after judgment creditors successfully prosecuted an adversary proceeding to deny Gilman's Chapter 7 discharge, they requested approximately $2.15 million in fees. The bankruptcy court awarded fees of $137,907.66 and costs of $166,453.58. Judgment creditors appealed the award to the Bankruptcy Appellate Panel ("BAP"), arguing that the bankruptcy court erred as a matter of law in finding that Code of Civil Procedure section 685.080 limited permissible fees to those incurred in the past two years. The BAP affirmed the bankruptcy court's ruling. The court finds that the fees incurred in pursuing this appeal were not reasonable and necessary to enforce the underlying judgment. The court recognizes that success is not determinative of reasonableness. *See Thayer v. Wells Fargo Bank* (2001) 92 Cal.App.4th 819, 839. However, the fact that judgment creditors did not prevail on their argument in the bankruptcy court, and did not prevail on the appeal is relevant in assessing reasonableness, and judgment creditors do not demonstrate that either the bankruptcy court's, or the BAP's decisions on this issue were erroneous. In light of the underlying judgment amount, applicable law, and the totality of the facts surrounding this case, the court submits that a reasonable client would not willingly accept responsibility for the significant fees incurred in attempting to obtain a higher fee award than had been previously ordered. The motion to tax is granted as to all fees related to Item 1.

As to Item 2, judgment creditors appealed an order of the bankruptcy court denying a motion for cost-of-proof sanctions. The BAP affirmed the bankruptcy court's order. The court finds that the fees incurred in pursuing this appeal were not reasonable and necessary to enforce the underlying judgment. Judgment creditors do not demonstrate that either the bankruptcy court, or the BAP's decisions on this issue were erroneous. In light of the underlying judgment amount, applicable law, and the totality of the facts surrounding this case, the court submits that a reasonable client would not willingly accept responsibility for the significant fees incurred in appealing this issue. The motion to tax is granted as to all fees related to Item 2.

As to Item 3, after prevailing in the adversary proceeding, judgment creditors appealed several orders of the bankruptcy court including (1) the court's denial of judgment creditors' anti-SLAPP motion; (2) the court's denial of judgment creditors' motion to strike; (3) the court's order granting Gilman's motion to compel and awarding sanctions; (4) the court's order denying judgment creditors' motion to compel further discovery; (5) the court's order reducing fees and costs awarded to judgment creditors; and (6) the court's order denying judgment creditors' motion for reconsideration as to fees and costs.

In a lengthy ruling, the BAP overwhelmingly rejected the majority of judgment creditors' arguments, noting that "[c]reditors have raised a number of issues on appeal that have no continuing relevance to the merits of the underlying discharge litigation. Nor will they have any impact on the outcome of that litigation." (See Memorandum at p. 11.) The BAP did, however, reverse and remand as to two discrete categories of attorneys' fees which the bankruptcy court had reduced. In light of the very limited success on an appeal which was largely devoted to issues which the BAP noted had no continuing relevance to the merits, the motion to tax is granted as to fees for 175 hours

asserted by judgment creditors, which the court finds were not reasonable and necessary to enforce the underlying judgment.

As to Item 4, which seeks fees related to litigation on remand from the Ninth Circuit with respect to Gilman's homestead exemption claim, the motion to tax is denied. Despite the fact that judgment creditors did not prevail, the court finds that enforcement efforts related to Gilman's claim of a homestead exemption are reasonable and necessary to collection of judgment efforts.

As to Item 5, judgment creditors appealed the trial court's decision not to award sanctions after granting a motion to compel. As to Item 6, judgment creditors appealed the trial court's denial of a motion to garnish the wages of Gilman's wife. As to Item 7, judgment creditors appealed the trial court's denial of a motion for second assignment order. The appellate division affirmed each of the trial court's rulings. Further, as to each of these items, in light of the underlying judgment amount, applicable law, and the totality of facts including the amounts at stake, the court submits that a reasonable client would not agree to incur nearly $50,000 in additional fees to pursue these appeals. The motion to tax is granted as to all fees related to Items 5, 6 and 7.

As to Item 8, judgment creditors appealed orders of the court relating to motions to tax filed by Gilman. Judgment creditors were largely successful on this appeal, with the appellate division reversing the trial court's decisions and remanding for further proceedings. However, in reviewing the summary of fees attached to the memoranda of costs, the court finds that not all of the fees requested can be considered reasonable and necessary to enforcement of the underlying judgment. Specifically, the court finds that work related to judgment creditors' motion for summary reversal, motion for sanctions based on Gilman's late-filed brief, and petition for rehearing, were not reasonable and necessary to enforcement, and grants the motion to tax as to 61.05 hours. Further, the court finds that it was not reasonable and necessary to expend 44.6 hours on a statement of disqualification as to Judge Jones, and accordingly the court taxes an additional 30 hours.

Finally, as to Item 9, judgment creditors incurred 146 hours in opposing Gilman's attempt to dismiss his own appeal. The court finds that this time was not reasonably and necessarily incurred in connection with enforcement of the underlying judgment, and grants the motion to tax as to all fees related to Item 9.

In summary, the motion to tax is granted in part, and the court taxes fees based on 871.15 hours sought by judgment creditors in the memoranda of costs. The court notes that judgment creditors voluntarily reduced the fees sought by ten percent, or 132.51 hours. The motion is denied as to 453.95 hours requested by judgment creditors, split evenly between Phillips and the Corporation, for a total of 226.975 hours each. Multiplied by the billing rate of $395, this results in attorneys' fees pursuant to Code of Civil Procedure section 685.040 of $89,655.13 per judgment creditor.

2. M-CV-0075239 Wells Fargo Bank, N.A. vs. Garland, Lisa Anne

On its own motion, the court vacates the dismissal of the action entered April 9, 2020. As judgment was entered on March 25, 2020, the request for dismissal should not have been entered by the clerk.

Plaintiff's motion to vacate judgment is granted. The judgment entered March 25, 2020, is hereby vacated.

The court sets an order to show cause re: dismissal on September 15, 2020, at 11:30 a.m. in Department 40.

3. S-CV-0036159 Leichus, Richard vs. Leichus, Christopher, et al

Appearance required on August 14, 2020, at 8:30 a.m. in Department 3.

4. S-CV-0036383 Weiss, Craig vs. Carmax Superstores California, LLC

Plaintiffs' unopposed motion for preliminary approval of class action settlement is granted.

The court has broad discretion in determining whether (1) a settlement is fair and reasonable, (2) the class notice is adequate, and (3) certification of the class is proper. *In re Cellphone Fee Termination Cases* (2010) 186 Cal.App.4th 1380, 1389; *Wershba v. Apple Computer, Inc*. (2001) 91 Cal.App.4th 224, 234-235. "[The] preliminary determination establishes an initial presumption of fairness…" *In re General Motors Corp*. (3d Cir. 1995) 55 F.3d 768, 784. "[I]f the proposed settlement appears to be the product of serious, informed, non-collusive negotiations, has no obvious deficiencies, does not improperly grant preferential treatment to class representatives or segments of the class, and falls within the range of possible approval, then the court should direct that the notice be given to the class members of a formal fairness hearing…" *Schwartz v. Dallas Cowboys Football Club, Ltd.* (E.D. Pa. 2001) 157 F.Supp.2d 561, 570, n.12, quoting Manual for Complex Litigation, Second § 30.44 (1985).

When reviewing the fairness of a class action settlement, the court is to give due regard to the parties' agreement, ensuring the agreement is not a product of fraud, overreaching parties, or collusion and that the settlement, as a whole, is fair, reasonable, and adequate. *In re Cellphone Fee Termination Cases* (2010) 186 Cal.App.4th 1380, 1389*; Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1801; *7-Eleven Owners for Fair Franchising v. Southland Corp.* (2000) 85 Cal.App.4th 1135, 1145. Reasonableness of the settlement may be determined by looking to several factors such as the strength of the plaintiff's case; the risk, expense, complexity, and duration of further litigation; discovery; the experience of counsel; the presence of government participation; and the reaction of class members to the proposed settlement. *In re Cellphone Fee Termination Cases, supra; Dunk, supra; Kullar v. Foot Locker Retail, Inc., supra*.

The court has carefully reviewed and considered the Joint Stipulation re Class Action Settlement, the moving papers, and accompanying declarations filed in connection with the motion. Based upon that review, the court determines that a sufficient showing has been made that the settlement is fair, reasonable and adequate.

The court grants leave to plaintiffs to file the Third Amended Class Action Complaint attached as Exhibit 1 to the declaration of James A. Clark, on or before August 28, 2020.

The court preliminarily certifies the "Arbitration Class" and the "Non-Arbitration Class" as identified in paragraphs 4 and 6 of the proposed order preliminarily approving class action settlement and granting provisional class certification ("the Proposed Order"). The court preliminarily approves the proposed settlement agreement and approves the Notice of Class Action Settlement (Arbitration Class Members) and Notice of Class Action Settlement (Non-Arbitration Class Members), attached as Exhibits B and C to the Joint Stipulation re Class Action Settlement. The parties are authorized to provide notice to the Arbitration Class Members and Non-Arbitration Class Members in the manner set forth in the settlement agreement.

The court preliminarily appoints counsel identified in paragraph 11 of the Proposed Order as Class Counsel. CPT Group is approved to act as the Claims Administrator. The court also incorporates by reference all findings and orders set forth in the Proposed Order.

The court sets a Final Approval Hearing on October 23, 2020, at 8:30 a.m. in Department 3, located at the Historic Courthouse in Auburn.

5. S-CV-0041083 Alizadeh, Azita vs. Gill, John

Plaintiff and defendants entered into a settlement agreement on August 23, 2019. The parties entered into a modified written settlement agreement on February 20, 2020, which extended the deadline to complete purchase of real property to March 19, 2020. Plaintiff was unable to complete the purchase of the property by March 19, 2020, and her requests for further extensions of time were denied. Plaintiff now moves to set aside the settlement agreement so that she can pursue her claims in this action.

Plaintiff's motion to set aside settlement is denied. A "valid compromise agreement has many attributes of a judgment, and in the absence of a showing of fraud or undue influence, is decisive of the rights of the parties thereto and operates as a bar to the reopening of the original controversy." *Folsom v. Butte County Ass'n of Governments* (1982) 32 Cal.3d 668, 677. Plaintiff fails to establish fraud, promissory estoppel, or any other grounds to set aside the settlement.

6. S-CV-0041927 Lull, Christopher, et al vs. Roysdon, Derek

The motion for attorneys' fees is continued to September 10, 2020, at 8:30 a.m. in Department 42 to be heard by the Honorable Charles D. Wachob.

7. S-CV-0042129 Michael, Jerry A. vs. FCA US LLC, et al

Motion to Reopen Discovery

Plaintiff moves to reopen discovery based on the continued trial date of October 19, 2020.

Upon motion of any party, the court may grant leave to reopen discovery after a new trial date has been set. Code Civ. Proc. § 2024.050(a). Relevant factors that may be considered by the court in ruling on the motion include: (1) the necessity and the reasons for the discovery; (2) the diligence or lack of diligence of the party seeking the discovery or the hearing of a discovery motion, and the reasons that the discovery was not completed or that the discovery motion was not heard earlier; (3) the likelihood that permitting the discovery or hearing the discovery motion will prevent the case from going to trial on the date set, or otherwise interfere with the trial calendar, or result in prejudice to any other party; and (4) the length of time elapsed between the date previous set, and the date present set, for trial. Code Civ. Proc. § 2024.050(b).

The court notes ongoing discovery disputes between the parties which have led to the scheduling of numerous motions to compel set in the coming weeks. The court finds that plaintiff acted with reasonable diligence in seeking the discovery at issue, which is critical for trial preparation. Further, there is no indication that permitting the discovery or hearing future discovery motions will prevent the case from going to trial on the current trial date of October 19, 2020.

Based on the foregoing, plaintiff's motion to reopen discovery is granted.

Motion to Compel Deposition

Plaintiff's motion to compel deposition attendance of FCA US LLC's person most knowledgeable is denied.

As a preliminary matter, the court notes that plaintiff's notice of motion states an incorrect hearing date of August 26, 2019, at Page ii.

Plaintiff noticed the deposition of FCA US LLC's person most knowledgeable, setting the deposition for February 13, 2020, in Sacramento. Although FCA US LLC had agreed to appear for the deposition on the date in question, it refused to attend the deposition unless it was rescheduled at defense counsel's office in Roseville.

Pursuant to Code of Civil Procedure section 2025.250(b):

> The deposition of an organization that is a party to the action shall be taken at a place that is, at the option of the party giving notice of the deposition, either within 75 miles of the organization's principal

executive or business office in California, or within the county where the action is pending and within 150 miles of that office.

According to plaintiff, the principal executive or business office of FCA US LLC is in Newport Beach and the scheduling of the deposition to take place in Sacramento was done as a courtesy. However, plaintiff fails to offer justification for compelling the deposition in violation of the requirements of Section 2025.250(b).

The parties' requests for sanctions are denied.

8. S-CV-0042147 Tibbett, David F., et al vs. Ford Motor Co., et al

Defendants' request for judicial notice is granted.

Defendants demur to the second amended complaint (erroneously labeled first amended complaint) filed March 6, 2020. A party may demur where the pleading does not state facts sufficient to constitute a cause of action. Code Civ. Proc. § 430.10(e). A demurrer tests the legal sufficiency of the pleadings, not the truth of the allegations or the accuracy of the described conduct. *Bader v. Anderson* (2009) 179 Cal.App.4th 775, 787. The allegations in the pleadings are deemed true no matter how improbable the allegations may seem. *Del E. Webb Corp. v. Structural Materials Co.* (1981) 123 Cal.App.3d 593, 604.

Plaintiffs assert six causes of action including (1) fraud in the inducement – intentional misrepresentation; (2) negligent misrepresentation; (3) fraud in the inducement – concealment; (4) fraud in the performance of contract – intentional misrepresentation; (5) violation of the Song-Beverly Act; and (6) violation of the Consumers Legal Remedies Act. Defendants contend that each of plaintiffs' claims is barred by the applicable statute of limitations. Defendants also contend that the requisite elements of each claim are not adequately pled.

Plaintiffs purchased the subject vehicle on August 6, 2005. (SAC, ¶ 9.) Plaintiffs allege one repair for "engine control module calibration" on January 16, 2006. (Id., ¶ 83.) Between October 2010 and mid-2012, plaintiffs allege numerous engine-related problems and repairs. (Id., ¶¶ 84-87.) Finally, after experiencing "catastrophic engine failure", plaintiffs traded in the vehicle on April 27, 2012. (Id., ¶ 88.) Plaintiffs allege that "[i]t was not until the summer of 2016, when Plaintiff David F. Tibbett spoke to his son-in-law who is also a truck owner, that Plaintiffs first discovered, or reasonably could have discovered, that FORD's previous repairs to the engine during the express warranty period had failed to conform Plaintiffs' Vehicle to the express warranty." (Id., ¶ 74.)

The applicable statute of limitations for plaintiffs' claims range between two and four years. Defendants assert that in all cases the statute of limitations would have commenced running no later than April 27, 2012, when plaintiffs traded in the vehicle after experiencing continuous engine problems over a two year period, culminating in catastrophic engine failure. This action was filed November 19, 2018, over six years

later. In opposition, plaintiffs argue that the statute of limitations for each of their claims was tolled based either on the discovery rule, the doctrine of fraudulent concealment, or equitable estoppel.

The discovery rule postpones accrual of a cause of action until plaintiff discovers, or has reason to discover, the facts supporting the cause of action. *Fox v. Ethicon Endo-Surgery, Inc.* (2005) 35 Cal.4th 797, 808. The allegations to support a delay in discovery must include not only the late discovery but also the inability to discover the facts. *Czajkowski v. Haskell & White, LLP* (2012) 208 Cal.App.4th 166, 177-178. A plaintiff that relies upon the delayed discovery rule must plead the specific facts showing (1) the time and manner of discovery and (2) the inability to have made earlier discovery despite reasonable diligence. *Fox v. Ethicon Endo-Surgery, Inc.*, *supra*, 35 Cal.4th 797, 808. "[P]laintiffs are required to conduct a reasonable investigation after becoming aware of an injury, and are charged with knowledge of the information that would have been revealed by such an investigation." *Id*.

Plaintiffs allege that they experienced numerous engine-related problems between October 2010 and mid-2012, and that they finally traded in the vehicle after experiencing catastrophic engine failure. By that time, plaintiffs were aware of having suffered injury, and knew that the vehicle was not performing as advertised, even if they did not have more specific information supporting claims of fraud against defendants. And, having been made aware of an injury, plaintiffs were required to conduct a reasonable investigation regarding their potential claims.

Plaintiffs do not allege specific facts showing reasonable diligence or a reasonable investigation after experiencing the foregoing issues. Plaintiff allege only that they brought the vehicle in for repairs on numerous occasions, and "relied on FORD's representations, and its authorized repair facilities' representations, that the repairs 'fixed' the problems." (SAC, ¶ 62.) Plaintiffs also reference internal Ford communications acknowledging problems with the 6.0-liter engine prior to plaintiffs' purchase of their vehicle. Such allegations do not demonstrate reasonable diligence, and the inability to have made an earlier discovery. Further, plaintiffs do not adequately allege the time and manner of discovery. Vague reference to a conversation with a third party who is also a truck owner does not fulfill this requirement.

In order to plead the doctrine of fraudulent concealment for the purpose of tolling the statute of limitations, plaintiffs must plead specific facts supporting the theory. *Mills v. Forestex Co.* (2003) 108 Cal.App.4th 625, 641. The doctrine does not apply where plaintiff is on notice of a potential claim. *Rita M. v. Roman Catholic Archbishop* (1986) 187 Cal.App.3d 1453, 1460. As noted, plaintiffs allege that they experienced engine-related problems between October 2010 and mid-2012, and that they traded in the vehicle after experiencing catastrophic engine failure. Plaintiffs' own allegations support the conclusion that they were on notice of potential claims against defendants by no later than April 27, 2012. Plaintiffs fail to demonstrate that fraudulent concealment tolls the statute of limitations.

Finally, with respect to equitable estoppel, plaintiffs must allege specific facts showing that defendants' conduct, relied on by plaintiff, induced plaintiffs to postpone filing the action until after the running of the statute of limitations. *Mills v. Forestex Co.*, *supra*, 108 Cal.App.4th at 652. The facts alleged in the second amended complaint do not support applicability of this doctrine.

As plaintiffs fail to adequately plead tolling of the applicable statutes of limitations, each cause of action fails to state a valid claim. Accordingly, the demurrer to second amended complaint is sustained. The only remaining question is whether plaintiffs should be granted leave to amend. Plaintiffs bear the burden of demonstrating how the complaint may be amended to cure the defects therein. *Assoc. of Comm. Org. for Reform Now v. Dept. of Indus. Relations* (1995) 41 Cal.App.4th 298, 302. A demurrer shall be sustained without leave to amend absent a showing that a reasonable possibility exists that the defects can be cured by amendment. *Blank v. Kirwan* (1985) 39 Cal.3d 311, 318. Plaintiffs were previously afforded leave to amend, but the second amended complaint suffers from the same defects as previously identified with respect to the first amended complaint. Further, although plaintiffs request leave to amend, they do not describe any manner in which the identified defects could be cured. Accordingly, the demurrer is sustained without leave to amend.

9. S-CV-0042445 Moeller, David vs. MJ Akerland, R.N.

Motion to Compel Further Responses to Special Interrogatories

Defendants' request for judicial notice is granted.

Defendants' motion to compel further responses to special interrogatories is granted in part, and denied in part.

The motion is granted as to Special Interrogatory No. 28. The court finds that plaintiff's response to this interrogatory is not straightforward, and is non-responsive.

The motion is denied as to Special Interrogatory Nos. 29 and 30. Plaintiff's responses are sufficient under the requirements of the Code of Civil Procedure.

On or before September 4, 2020, plaintiff shall serve a further response to Special Interrogatory No. 28 which complies with the requirements of Code of Civil Procedure section 2030.220.

The parties' requests for sanctions are denied.

Motion to Compel Further Responses to Requests for Production of Documents (RFP Nos. 1-7, 9-11 and 27-31)

Defendants' request for judicial notice is granted.

Defendants' motion to compel further responses to requests for production of documents is granted in part, and denied in part.

The motion is denied as to Request for Production Nos. 1-7, 9-11, and 27-28. The court finds that plaintiff's responses comply with the requirements of Code of Civil Procedure section 2031.220.

The motion is denied as to Request for Production No. 29. As phrased, the request is impermissibly overbroad. Further, defendants do not demonstrate good cause for the production. To demonstrate good cause, plaintiffs must set forth specific facts justifying the discovery. *Glenfed Dev. Corp. v. Superior Court* (1997) 53 Cal.App.4th 1113, 1117. Defendants rely on unsupported speculation, as opposed to setting forth facts specific to this case which suggest that a broad review of documents relating to potential sources of plaintiff's income is warranted.

The motion is denied as to Request for Production No. 31. As phrased, the request is impermissibly overbroad, and seeks documents which are protected by plaintiff's right to privacy, and which are irrelevant to the issues to be determined in this action. Defendants do not establish that plaintiff has placed his emotional and mental state directly at issue without limitation, particularly in light of plaintiff's verified admission that he does not seek damages for "severe emotional distress". For each of the foregoing reasons, defendants do not demonstrate good cause for production.

The motion is granted as to Request for Production No. 30. Plaintiff's response does not comply with Code of Civil Procedure section 2031.240(b). Defendants are not prohibited from seeking discovery which supports plaintiff's allegations in the action, despite plaintiff's admission that he does not seek damages for "severe emotional distress". To the extent plaintiff maintains that responsive documents are protected by any applicable privilege or protection, plaintiff shall serve a privilege log.

On or before September 4, 2020, plaintiff shall (1) serve a further response to Request for Production No. 30, which complies with Code of Civil Procedure section 2031.240(b) and (2) serve a privilege log with respect to any responsive documents withheld based on any applicable privilege or protection.

The parties' requests for sanctions are denied.

Motion to Compel Further Response to Request for Admission (RFA No. 16)

Defendants' request for judicial notice is granted.

Defendants' motion to compel further response to Request for Admission No. 16 is denied. As phrased, the request at issue is impermissibly overbroad, and seeks information which is irrelevant to the issues to be determined in this action. Defendants do not establish that plaintiff has placed his emotional and mental state

directly at issue without limitation, particularly in light of plaintiff's verified admission that he does not seek damages for "severe emotional distress".

The parties' requests for sanctions are denied.

Motion to Compel Further Responses to Request for Production of Documents (RFP Nos. 13, 17, 18, 19, 21, 22 and 24)

Defendants' request for judicial notice is granted.

Defendants' motion to compel further responses to requests for production of documents is granted.

Defendants seek to compel production of a privilege log as to Request for Production Nos. 13, 17, 18, 19, 21, 22 and 24. In response to these requests, plaintiff has asserted objections on the grounds of the attorney-client privilege and work product doctrine. Pursuant to Code of Civil Procedure section 2031.240(c)(1):

> If an objection is based on a claim of privilege or a claim that the information sought is protected work product, the response shall provide sufficient factual information for other parties to evaluate the merits of that claim, including, if necessary, a privilege log.

Code of Civil Procedure section 2031.240(b)(1) also requires the responding party to "[i]dentify with particularity any documents … falling within any category of item in the demand to which an objection is being made." The subject responses do not comply with Section 2031.240(b)(1), as they do not identify "with particularity" any responsive documents that are being withheld.

The court finds that production of a privilege log is warranted. On or before September 4, 2020, plaintiff shall a privilege log with respect to any documents to Request for Production Nos. 13, 17, 18, 19, 21, 22 and 24 that have been withheld based on any applicable privilege or protection.

The parties' requests for sanctions are denied.

Motion to Compel Further Response to Request for Admission (RFA No. 14)

Defendants' request for judicial notice is granted.

Defendants' motion to compel further response to Request for Admission No. 14 is granted. Information regarding whether plaintiff earned income from other sources in violation of the parties' employment agreement is relevant to plaintiff's claims and defendants' defenses in this action. The request for admission does not by itself impermissibly and unreasonably intrude into the private financial affairs of plaintiff.

On or before September 4, 2020, plaintiff shall serve a further verified response to Request for Admission No. 14, without objections.

The parties' requests for sanctions are denied.

10. S-CV-0042543 Esparza De Lara, Guadalupe vs. La Familia Ramirez, Inc.

The motion for summary judgment is continued to August 28, 2020, at 8:30 a.m. in Department 3.

11. S-CV-0044313 Tebbs, Michael vs. Sunbelt Rentals, Inc.

Application of Ian M. Jones to Appear as Counsel *Pro Hac Vice*

The application of Ian M. Jones to appear as counsel *pro hac vice* is granted as prayed.

Application of Patricia J. Hill to Appear as Counsel *Pro Hac Vice*

The application of Patricia J. Hill to appear as counsel *pro hac vice* is granted as prayed.

Application of Yash B. Dave to Appear as Counsel *Pro Hac Vice*

The application of Yash B. Dave to appear as counsel *pro hac vice* is granted as prayed.

12. S-CV-0044667 Hase, Scott vs. Ford Motor Company

The demurrer to first amended complaint is continued to August 28, 2020, at 8:30 a.m. in Department 3.

13. S-CV-0044835 Mattson, Monte D. vs. Parisi & Powell, et al

The application for right to attach order and writ of attachment is continued to August 28, 2020, at 8:30 a.m. in Department 3.

14. S-CV-0044985 Lor, Cha, et al vs. Duenas, Ami Barceliza

Defendant Ami Barceliza moves to strike punitive damages allegations set forth in plaintiffs' complaint for personal injury and property damage arising from a motor vehicle accident. A motion to strike under Code of Civil Procedure section 436 lies against a claim for punitive damages where the facts alleged do not rise to the level of malice, fraud or oppression required to support such an award. *Turman v. Turning Point of Central Cal., Inc.* (2010) 191 Cal.App.4th 53, 63.

To support a prayer for punitive damages, plaintiffs must allege ultimate facts supporting a finding of oppression, fraud or malice on the part of the defendant. Civil Code § 3294(a). Malice includes conduct which is intended by the defendant to cause

injury to the plaintiff, or despicable conduct which is carried on by the defendant with a willful and conscious disregard of the rights or safety of others. Civ. Code § 3294(c)(1). Oppression includes despicable conduct which subjects a person to cruel and unjust hardship in conscious disregard of that person's rights. Civ. Code § 3294(c)(2). Fraud includes intentional misrepresentation, deceit or concealment of a material fact with the intention of depriving a person of property or legal rights or otherwise causing injury. Civ. Code § 3294(c)(3).

Based on the court's review of the complaint as a whole, plaintiffs fail to allege sufficient facts to support punitive damages. Plaintiffs allege that as defendant's vehicle approached the intersection of Blue Oaks Boulevard and Washington Boulevard in Roseville, the traffic signal light turned from yellow to red. Plaintiffs further allege that although other cars began slowing to stop, defendant sped up in an attempt to cross the intersection, and collided with plaintiffs who had entered the intersection on a green light. (Complaint, p. 5.)

Plaintiffs do not allege that defendant intended to cause injury to plaintiff. Civ. Code § 3294(c)(1). In order to justify an award of punitive damages based on a conscious disregard for rights and safety of others, plaintiffs must allege facts showing that defendant was aware of the probable dangerous consequences of her conduct, and willfully and deliberately failed to avoid those consequences. *See Taylor v. Superior Court* (1979) 24 Cal.3d 890, 895. The factual allegations of the complaint are insufficient for this purpose. Further, the allegations do not support the conclusion that defendant engaged in despicable conduct with a willful and conscious disregard of the rights or safety of others, or subjected plaintiffs to cruel and unjust hardship in conscious disregard of plaintiff's rights. Civ. Code § 3294(c)(2). Finally, the allegations do not suggest that defendant committed fraud against plaintiffs. Civ. Code § 3294(c)(3).

Based on the foregoing, defendant's motion to strike the allegations and prayer for punitive damages in plaintiff's complaint is granted with leave to amend. Plaintiffs shall file and serve any amended complaint on or before September 4, 2020.

15. S-CV-0045033 In the Matter of Peachtree Settlement Funding, LLC

The petition to approve transfer of payment rights by and between S. Whitfield and Peachtree Settlement Funding, LLC, is denied.

In determining whether a proposed transfer should be approved, the court reviews the request to verify that the transfer is fair, reasonable, and in the payee's best interest. Ins. Code § 10139.5(b). The totality of the payee's circumstances is viewed in light of the factors set forth in Insurance Code section 10139.5(b). Petitioner seeks court approval of Mr. Whitfield's transfer of future life-contingent payments in the amount of $475,453.28 in exchange for $10,000. Mr. Whitfield states that he is 35 years old, with no minor children. He states that he is currently unemployed, experiencing a financial hardship, and that he will use the money to make a down payment on a mobile home or other place to stay. He states that he has applied to the court for approval of prior

transfers of his structured settlement payment rights on at least fourteen occasions, eight of which were approved. Petitioner notes that this court denied a prior petition on March 5, 2020, in Case No. SCV-44270. Petitioner omits at least one other prior petition which was denied in this court on January 20, 2020, in Case No. SCV-43029. The current petition is substantially similar to the petitions previously denied by this court in January and March 2020.

In light of the factors set forth in Insurance Code section 10139.5(b), particularly in light of the fact that S.W. has attempted and/or completed numerous prior transfer applications, and because the current transfer will provide S.W. with an astonishingly low return based on the value of the payments being transferred, the court cannot conclude that the transfer is in payee's best interest. Accordingly, the petition is denied.

16. S-CV-0045081 In the Matter of National General Insurance Co.

Respondent National General Insurance Company's ("NGIC's") motion to strike supplemental expert disclosure is granted in part, and denied in part.

The procedure for designating expert witnesses in advance of trial is set forth in Code of Civil Procedure section 2034.260. "All parties who have appeared in the action shall exchange information concerning expert witnesses in writing on or before the date of exchange specified in the demand." Code Civ. Proc., § 2034.260(a). The exchange of expert witness information must include either of the following: "(1) A list setting forth the name and address of a person whose expert opinion that party expects to offer in evidence at the trial. (2) A statement that the party does not presently intend to offer the testimony of an expert witness." Code Civ. Proc. § 2034.260(b). Pursuant to Code of Civil Procedure section 2034.280(a):

> Within 20 days after the exchange described in Section 2034.260, any party who engaged in the exchange may submit a supplemental expert witness list containing the name and address of any experts who will express an opinion on a subject to be covered by an expert designated by an adverse party to the exchange, if the party supplementing an expert witness list has not previously retained an expert to testify on that subject.

Supplemental disclosure under Code of Civil Procedure section 2034.280 does not permit a party to "simply delay his designation of retained experts until after he had the opportunity to view the designation timely served by [the other party]." *Fairfax v. Lords* (2006) 138 Cal.App.4th 1019, 1027 ("*Fairfax*"). In *Fairfax*, which was a medical malpractice case, the defendant's initial expert designation did not identify experts that defendant "expected" to call, but reserved the right to designate experts in rebuttal to plaintiff's designations. *Id.* at 1025. After receiving plaintiff's expert disclosure, defendant responded with a rebuttal list of two retained experts. The Court of Appeal found this rebuttal to be improper since "the only real disputed issue in this case" was whether defendant's treatment of plaintiff complied with the standard of care. *Id.* at 1027.

In contrast, in *Du-All Safety LLC v. Superior Court* (2019) 34 Cal.App.5th 485, the Court of Appeal held that where there is no evidence that a party should have expected to retain experts that were not designated in the initial list, and there is no evidence of gamesmanship and no showing of prejudice as a result of the supplemental designation, there is no basis to exclude experts disclosed in a supplemental designation.

In this case, claimant asserts that he did not anticipate that expert testimony would be required to establish causation of injuries, and further did not anticipate that respondent would dispute causation based on an alleged pre-existing injury. Respondent does not suggest that this case involves only one real disputed issue, as in *Fairfax*, such that gamesmanship may be inferred. Nor does respondent establish prejudice, particularly in light of the continued arbitration date. The court finds that with respect to the subject of causation of injuries, claimant's supplemental disclosure complies with Code of Civil Procedure section 2034.280. Respondent's motion is denied with respect to the subject of causation of injuries.

Claimant's opposition is limited to the subject of causation. As to other subjects set forth in the supplemental disclosure, claimant does not dispute that such subjects were previously identified in the initial disclosure, or go beyond those subjects identified in respondent's initial disclosure. Accordingly, respondent's motion is granted as to the remaining subjects of testimony identified in the supplemental disclosure.

17. S-CV-0045189 Sanchez, Jack L., et al vs. Procopio, Vincent L., et al

The OSC re preliminary injunction is continued to August 21, 2020, at 8:30 a.m. in Department 3. Due to delays in processing, defendant's opposition was not available with sufficient time for court review in advance of the scheduled hearing date.
